

SOLANO COUNTY GRAND JURY



City of Vallejo Transit: Vallejo Ferry Ticket Funds Missing “Taxpayers Get Mugged”



**2004-2005 Grand Jury Report
Issued: June 21, 2005**

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I. Reason for Investigation

The Grand Jury elected to investigate ferry ticket revenues owed to the City of Vallejo that were collected by a vendor subcontracted by Vallejo Citizens Transit Corporation (VCTC). VCTC has an agreement with the City of Vallejo to manage the city’s transit system and collect ferry service fares.

II. Procedure

The Grand Jury:

- Interviewed current and former City of Vallejo staff members
- Reviewed Solano County District Attorney’s response to the City of Vallejo police inquiry
- Reviewed related City of Vallejo agreements, memos and letters
- Reviewed City of Vallejo city council agendas and minutes
- Reviewed Fair Political Practices Commission Statement of Economic Interest forms

III. Background

Beginning some 50 years ago, VCTC was formed to manage the City of Vallejo Transit System. During that time, the Transit System developed into a fixed-route service of eight local routes, three regional routes operating along the I-80 corridor, and various special routes serving school children. The city now owns a fleet of 70 wheel chair accessible transit buses and a 24,000 square foot bus maintenance and operations facility. Management services include the oversight of day-to-day operations with 110 employees. In 1976, VCTC began administration of vendor programs that sell Baylink and Vallejo Transit passes and tickets.

One function of VCTC’s management agreement is the collection of ferry ticket revenue. Funds from ticket sales provide for about 50% of the ferry operational costs of \$8 million.

In 1997, VCTC entered into an agreement with the owners of MUGGS Coffee Emporium to sell transit passes and passenger tickets. The agreement stipulated that all revenues be submitted to VCTC monthly. The City of Vallejo’s agreement with VCTC specifies that fares be submitted to the city on a daily basis. In Fiscal Year 2002-2003, MUGGS reported total ticket sales of almost \$686,000.

In September 2004, VCTC notified the City of Vallejo that they had not received the ticket revenue collected by MUGGS for the months of January and February, 2004. The missing funds totaled approximately \$190,000. The city apparently was unaware that the ferry revenue had not been forwarded as required in the agreement between the city and VCTC.

On November 9, 2004, the Interim City Manager instructed the Vallejo Police Department to initiate an investigation into the alleged missing ferry ticket receipts from MUGGS Coffee Emporium. The initial inquiry disclosed the following:

1. The City contracts with VCTC for operation of Vallejo mass transit which includes ticket sales for ferry service.
2. VCTC then subcontracted with MUGGS Coffee Emporium for the sale of ferry tickets. MUGGS was required to maintain records and submit the money collected less a percentage for their service.
3. Subsequent to discovery of the fact that MUGGS had not been submitting the ferry ticket sales revenue as required, MUGGS' representatives were contacted by the VCTC General Manager, who apparently agreed to a repayment schedule.
4. The Interim City Manager was of the opinion that the VCTC General Manager had no authority to agree to such an arrangement. However, that seemed to be totally within the purview of VCTC since the City had no contractual relationship with MUGGS. Basically, VCTC is responsible for collecting the revenue and making the City "whole."
5. If a MUGGS employee embezzled the revenues, the victim is MUGGS, not VCTC or the City.

Therefore, the police department concluded that MUGGS would have to report an alleged embezzlement for them to open a criminal case.

On November 22, 2004, the Solano County District Attorney reviewed the Vallejo Police Department inquiry and agreed with their conclusion and recommended that the controversy be handled as a civil dispute which would mean the city would require that VCTC remit payment as specified by the terms and conditions of the agreement, and could bring suit if the agreement was not honored.

On December 9, 2004, rather than requiring payment from VCTC per terms and conditions of the agreement, the City of Vallejo entered into an Assignment of Debt Agreement with VCTC which transfers the responsibility for collecting the debt from VCTC to the City. The agreement assigns, transfers and conveys the rights, title and interest in the debt (\$185,058.60) to the city with full power and authority, at city's cost, to collect, sue for and discharge the debt or sell and assign it. The agreement holds VCTC "harmless from all losses, costs, damages, liabilities and expenses" which may occur on or after the date of the agreement. The city is currently negotiating with the owners of MUGGS regarding repayment of the debt with resolution expected by May 2005.

On January 7, 2005, a special Vallejo City Council meeting was conducted to consider staff's recommendation for a resolution to terminate the 2002 agreement between VCTC and the City and to enter into a new agreement with ATC/Vancom for transit management services. The primary reason for this action was the inability of VCTC to meet Federal Transit guidelines which may jeopardize federal funding. Specifically, VCTC was unable to provide adequate capital funding (\$1.3 million) to support operating costs. The resolution failed by a 4 to 3 vote.

On March 8, 2005, the city council extended the 2002 VCTC agreement for one year ending June 30, 2006.

On March 14, 2005, MV Transportation, Inc., the nation's largest privately-held passenger transportation company acquired a controlling interest in VCTC. MV Transportation will provide required capital funding and stated they will allow VCTC to operate as an independent subsidiary.

IV. Findings and Recommendations

Finding #1 - The city did not hold VCTC accountable under the terms and conditions of the management agreement. The city released VCTC from their contractual responsibility for the missing ticket revenue by entering into the Assignment of Debt Agreement dated December 9, 2004.

Recommendation #1 – The Grand Jury believes the City of Vallejo should have held VCTC responsible for their contractual responsibilities to produce the ferry ticket revenue. In the future, the city should use appropriate civil remedies to recover revenues that belong to the taxpayers of Vallejo.

Finding #2 – At the time of this report, the city was negotiating with the owners of MUGGS to repay the missing ticket revenue totaling \$185,058.60.

Recommendation #2 – The entire sum owed to the citizens of Vallejo should be collected by the city from the owners of MUGGS in an expeditious manner.

Finding #3 - Eight months elapsed before the city was notified by VCTC of the missing ticket revenue.

Recommendation #3 – The city should ensure that revenues from the transit company are accounted for at least on a monthly basis which would identify shortfalls in a timely manner.

Finding #4 - At the time of the missing funds, VCTC's agreement did not include theft insurance which would have compensated the city for the loss. The current agreement between VCTC and the city requires fidelity/theft insurance.

Recommendation #4 – The city attorney should ensure that all management service agreements that involve the collection of public funds should contain provisions that protect the city from potential losses. If the terms and conditions of the existing agreement are not met, the city should begin the termination process as specified in paragraph five of the agreement.

Finding #5 - VCTC entered into agreements with vendors to sell Baylink and Vallejo Transit passes and tickets. Prior to the approval of VCTC's March 8, 2005 one-year agreement extension, the vendor agreement was vague and did not include specific financial procedures and bonding for theft.

Recommendation #5- The city should reserve the right to review and approve all vendors and agreements prior to VCTC authorizing the sale of Baylink and Vallejo Transit passes. The vendor agreement and the agreement between the city and VCTC should include an indemnity provision holding the city harmless from any and all liabilities from losses, damages or actions that may arise from services rendered by VCTC through subcontracted services.

Finding #6 - There are major ticket vendors in the Bay Area that have established ticket systems with essential financial controls and the ability to provide required insurance and bonding.

Recommendation #6 - VCTC and the city should explore the use of these providers to modernize ticket service and maximize the protection of ticket revenues.

Finding #7 – Prior to contract renewal between the city and VCTC in June 2002, the city notified VCTC of six procedural changes designed to produce measurable improvements to address performance deficiencies. They were:

1. Reduce accident frequencies.
2. Be current on all regulatory compliances.
3. Report all accidents in excess of \$1,000 to city within 24 hours.
4. Report all passenger complaints.
5. Report manpower turn-over ratios, overtime percentages and staff shortages on a monthly basis.
6. Implement the full CalTIP Safety Program.

Prior to and included in the extension of the contract dated March 8, 2005, the abovementioned performance deficiencies were again identified as well as:

7. Lack of employee performance reviews and management training.
8. Monthly invoices must separately specify amounts due for payment of operating expenses, capital expenses and the management fee.

Other requirements included:

1. Provide working capital in the amount of \$1,376,250.
2. Provide Performance and Surety Bonds.
3. Submit revised vendor ticket sales agreement for city approval.
4. Expand express bus service.

Recommendation #7 – If terms and conditions of the existing agreement are not met, the city should begin the termination process as specified in paragraph five of the 2002 agreement.

Finding #8 - The City of Vallejo City Council rejected a January 7, 2005 staff recommendation to terminate the agreement with VCTC and did not consider other transit operators when awarding the June 2002 contract and its March 8, 2005 one-year extension.

Recommendation #8 - Although public bidding for transit management services is not required by city ordinance, in light of continued deficiencies in VCTC's performance, the city council should not enter into any further contract extensions without soliciting Requests for Proposals to operate Vallejo's transit system.

Finding #9 – Accordingly to a letter from VCTC to the City of Vallejo dated April 17, 2002, the current president of VCTC was a business partner with a City of Vallejo councilmember. The 2002, 2003, 2004 and 2005 California Fair Political Practices Commission Form 700 filed with the city clerk and State of California indicates that the councilmember shares a financial interest in real property with the current president of VCTC. During 2005, the councilmember voted against staff's recommendation to terminate the VCTC agreement and voted to extend the existing agreement with VCTC. In 2002, the same councilmember voted in a unanimous consent vote to approve the current management agreement. While the Grand Jury does not see a criminal violation, the Jury is concerned about the appearance of impropriety. Given that the councilmember has a shared interest in real property with an officer of VCTC, this may have improperly influenced his vote on the VCTC agreement. The Grand Jury was not able to determine whether or not the councilmember received any direct financial gain from his actions as defined in California Statement of Economic Interest Code and Government Code §§1090 and 1091.

Recommendation #9 – The city attorney should advise councilmembers of the Conflict of Interest obligations and consult with the Fair Political Practices Commission when questions of impropriety arise.

V. Comments

To insure that current and future public transit revenues are protected from similar situations, the 2004 – 2005 Grand Jury strongly recommends that the 2005 – 2006 Grand Jury follow-up on the recovery of the missing funds and aforementioned recommendations.

VI. Affected Agencies

- City of Vallejo
- Solano County District Attorney (courtesy copy)
- VCTC (courtesy copy)